

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9953 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

CHUDASAMA MAHIPALSINH INDRASIH

Versus

STATE OF GUJARAT & 1

Appearance:

MR HARESH J TRIVEDI for Petitioner
MR SK PATEL for Respondent No. 1
MR DG CHAUHAN for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/09/1999

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner, by this petition under Article 226 of the Constitution, is praying for grant of following reliefs:

(A) To issue a writ of mandamus or any other appropriate writ, direction or order in the

nature of a writ of mandamus directing the respondent-authorities to issue an order of regular appointment to the petitioner, and be further pleased to direct the respondent-authorities to pay the petitioner salary on the regular pay scale prescribed for the post of Tracer with all consequential benefits from the date of his initial appointment in the Department, i.e. from May, 1991.

(B) during the pendency and final hearing of this petition, the Hon'ble Court be pleased to issue an order of injunction restraining the respondent-authorities from terminating the services of the petitioner, and be further pleased to direct the respondent-authorities to allow the petitioner to discharge his duties as a Tracer.

(C) During the pendency and final hearing of this petition, the Hon'ble Court be pleased to issue an order directing the respondent-authorities to pay the petitioner his monthly salary in the regular pay scale for the post of Trace from the current month onwards.

(D) Any other appropriate relief/s as may be deemed just and proper in the facts and circumstances of the case, including the costs of this petition, may kindly be granted to the petitioner.

3. This matter was admitted by this Court on 17-6-1995 and interim relief in terms of Para-17(B) has also been granted.

4. Learned counsel for the petitioner, on being asked by the Court, has failed to show any material or any other document on the record of this special civil application that the petitioner was appointed on the post of Tracer. Relying on the document, annexure 'F' at Page No.20 of the special civil application, learned counsel for the petitioner contended that the petitioner is discharging the duties of Tracer in the Board.

5. Reply to the special civil application is there on the record on behalf of the respondent No.2 and the respondent No.2 has denied that the petitioner has been taken in the Board as a Tracer. What the respondents stated that they have taken the petitioner on daily wages as a Labourer and that too during the scarcity period on purely temporary basis for miscellaneous work. Further

plea has been taken that the petitioner is not possessing the requisite qualification prescribed under the Recruitment Rules of the Board for the post of Tracer. Another objection has been raised that the appointment on the post of Tracer has to be made in accordance with the Recruitment Rules i.e. after selection. As this is a post on which recruitment has to be made by selection, otherwise also, no question does arise for regularising his services.

6. On being asked by the Court, learned counsel for the petitioner has failed to give out what are the qualifications prescribed for appointment on the post of Tracer.

7. The Recruitment Rules have not been produced for the perusal of this Court either by the petitioner's counsel or by the respondents. It is really shocking that the Gujarat Water Supply & Sewerage Board though represented by its counsel has not cared to produce on the record of this special civil application the relevant Recruitment Rules. A plea has been taken that the petitioner was not possessing the requisite qualification prescribed under the Recruitment Rules and he has not been selected through recruitment procedure and the mode of recruitment to the post of Tracer is selection but it is a matter which could have been ascertained from the Rules, which have not been produced. This approach and the way in which the pleadings have been filed by the respondents deserves to be deprecated and accordingly it is deprecated. In such matters where the Board is relying on the Recruitment Rules it is foremost duty of it to produce the same before this Court. Be that as it may.

8. It is not the case of the petitioner that he is possessing the requisite qualifications prescribed for appointment on the post of Tracer. Similarly, it is also not the case of the petitioner that on the post of Tracer, no selection has to be made. Even if it is taken though there is no material that the petitioner has been given the appointment on daily wages as Tracer, in case, such prayers are granted by this Court, these daily wage appointments will become a conduit pipe for regular selection. This is contrary to Articles 14 and 16 of the Constitution. It is not gainsay that Article 16 provides that in the matter of appointment in public employment, the same has to be made by open selection. A tendency has developed and it is developing everyday in the Corporations or Boards or Municipalities or Gram Panchayats, or District Panchayats or even in many other

Government Departments to make the appointments on daily wages and then such employees are coming before this Court for directions to the employers to regularise their services.

9. These type of appointments create two-fold problems. One is, this daily wage system continues, which is contrary to Articles 14 and 16 of the Constitution and it may open the floodgates for corruption, favoritism and nepotism. The persons who have relatives or for some other considerations manoeuvre their daily wage appointment and ultimately they manage to continue for considerable long period and thereafter they start to claim manifold benefits such as regularising their appointments, pay scale, seniority etc.. Another problem is that this Court is flooded with such litigations which otherwise are totally avoidable at the end of the respondents. Out of hundred cases, as per the statistics if collected, at least 25 to 30 % may be the cases of daily wagers who are praying for regularisation of their services before this court. In such matters, sometimes the Courts looking to the long services of the daily wagers are persuaded to give direction for regularisation of such daily wagers or it some times gives out some scheme for their regularisation in phases.

10. However, this is not the case where the prayer of the nature as made by the petitioner has to be granted. The petitioner is claiming the regularisation on the post of Tracer and unless this Court is satisfied that he fulfills the requisite qualifications, leaving apart that he is not selected on the post, no such direction can be issued otherwise what this Court will ask to the respondents to select him as Tracer who, otherwise is not eligible for the same.

11. Only on this ground, this writ petition deserves to be dismissed and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-